IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.3125 OF 2003

Madura Coats Employees Union. ...Petitioner.
Vs.
Madura Coats Ltd. & Anr. ...Respondents.
....
Mr. V. A. Pai for the Petitioner.
Mr.M. S. Naik for Respondent No.1.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

March 30, 2005.

ORAL JUDGMENT :

The Industrial Tribunal has ruled on a wage reference that was referred to it for adjudication. The Union has confined the challenge before the Court to the award to the extent to which it accepted the plea of the management in a notice of change under Section 9A of the Industrial Disputes Act, 1947 and substituted a fresh scheme for dearness allowance for the existing scheme which had held the field for over 30 years. The existing pattern of providing dearness allowance was based on a dual

linkage - linkage based on slabs of basic pay and linked to the Consumer Price Index. As a result of the award, the Tribunal accepted the case of the management and while removing the linkage with basic pay approved the payment of dearness allowance confined only to a variation based on the Consumer Price Index. The Union representing the workmen challenges the award to this extent under Article 226 of the Constitution.

2. Madura Coats Limited came into existence on 1st July 1974 upon an amalgamation of three Companies, J. & P. Coats India Pvt. Ltd., A & F. Harvey Ltd. and Madura Mills Co. Ltd. The establishment at Palton Road, Mumbai, in which a majority of the workmen covered by the reference are employed, was an establishment of J. & P. Coats India Pvt. Ltd. prior to amalgamation. There was an industrial settlement of 1971 and upon its termination, the Union had raised fresh demands on 3rd March 1975. The management issued a notice of change for introducing a new scheme for dearness allowance which was withdrawn and a settlement was entered into in respect of the

demands of the workmen in terms whereof an award was passed in an industrial adjudication. Upon the expiry of the award, the last wage settlement was entered into between the Union and the management 25 years ago on 22nd January 1980. There has been no wage revision since then. On the eve of the expiry of the settlement, the Union raised a Charter of Demands on 13th November 1982. On 6th April 1983, the management issued a notice of change under Section 9A of the Industrial Disputes Act, 1947.

3. Even prior to the settlement of 22nd January 1980, the dearness allowance payable to the workmen to whom the present proceeding relates, was linked both to the basic wage as well as to the Bombay Consumer Price Index. As a result of the settlement of 22nd January 1980, the principle underlying the scheme for dearness allowance - a dual linkage with the basic pay and the Consumer Price Index - was continued, but there was a variation in the rate of dearness allowance. The pattern of dearness allowance as it existed in the settlement of 1980 was as follows:

"Dearness Allowance

Existing

Basic Salary per month	Variation for 10 points per month	Bombay Consumer Price Index range 1621-1630
First Rs.100/-	3%	725% of Basic Salary
Next Rs.100/-	1.1/2%	362 1/2% of basic salary
Remainder	3/4%	181 1/4% of basic salary.

Minimum Dearness Allowance : Rs.564/-

Minimum Variation : Rs.3/-"

4. The management in its notice of change sought the introduction of the following scheme of dearness allowance with effect from 1st January 1983, namely:

Basic Pay Slab	Bombay Consumer Price Index Range 1621-1630	Variation for 10 points (+) or (-) Points

---

"Rs.1 to 100	1000%	5%
Rs.101 to Rs.200	500%	2.5%
Rs.210 to Rs.300	250%	1.25%
Rs.301 and above	125%	0.625%

Minimum Dearness Allowance : Rs.1000/-

Minimum Variation : Rs.5/-"

5. The Consumer Price Index (Simla Series) with a base of 1960, as applicable to the City of Bombay for the calculation of Dearness Allowance for January 1983 was 510 points. The management proposed that Dearness Allowance corresponding to CPI 510 will be Rs.410/- for all employees irrespective of basic pay. For a rise in CPI over 510 points, it was proposed that Dearness Allowance will be paid at the rate of Rs.1.20 per point rise. The maximum Dearness Allowance was sought to be capped at Rs.650 per month. The notice of change which was issued by the management inter alia proposed revised grades of basic pay to which the new scheme of Dearness Allowance was to

be applied. The Union stated before the Industrial Tribunal that it was willing to accept the grades of basic pay which were proposed by the management, but was not willing to accept the proposal of the management to substitute the existing scheme of Dearness Allowance that had held the field for several decades with a scheme based an linkage with the Consumer Price Index alone.

6. The demands which were raised by the Union were adjudicated upon by the Industrial Tribunal in an award dated 10th June 1996. Writ Petitions were filed by the management as well as the workmen to impugn the award of the Industrial Tribunal. A Learned Single Judge of this Court by a judgment and order dated 8th March 2000 dismissed the petition filed by the management. By another judgment also of the same date, the Petition filed by the workmen was allowed in part and the award of the Industrial Tribunal was quashed and set aside in certain areas in order to facilitate a fresh determination on remand. The management carried the order dismissing its petition in appeal. On 1st August 2000, a Division Bench while disposing of the appeal, directed that

the Industrial Tribunal on remand shall also reconsider the first and third items of the notice of change proposed by the management in the course of the proceeding on remand. The Division Bench, however, directed that the Industrial Tribunal shall not accept the case of the management to the extent to which it involves a reduction of the wages that were being paid as on date and the payment of Dearness Allowance, in accordance with the Consumer Price Index for August 2000 shall be maintained subject to a revision by an agreement or by operation of law.

7. The Industrial Tribunal has, upon remand, rendered its award on 17th April 2003. The Industrial Tribunal has accepted the contention of the employer in the notice of change under Section 9A and has abolished the prevailing pattern for the payment of Dearness Allowance based on a linkage both with the basic pay and the Consumer Price Index. The basic wage scales as proposed by the management have also been accepted. That has given rise to the institution of these proceedings under Article 226. At the hearing of the Petition, the submissions of the Union before

the Court have been confined to a challenge to the award of the Tribunal only in so far as it introduces a new system for Dearness Allowance based on linkage with the Consumer Price Index alone.

8. When this petition came up on 12th January 2004, a Learned Single Judge directed that the Petition be listed for hearing and final disposal at the stage of admission. In view of these directions, liberty was granted to the parties to complete their pleadings, to file documentary material on which they propose to rely and to place written submissions on record. This has been done. With the consent of Counsel and at the request of parties, the Petition is being taken up for hearing and final disposal. Rule is accordingly issued. Counsel for the management has waived service and the Petition is taken up for hearing and final disposal.

9. In order to appreciate the nature of the challenge to the award of the Industrial Tribunal, it would be necessary to advert to the basis on which the employer had sought an alteration of the prevailing system of the payment of Dearness Allowance. In the

Written Statement that was filed before the Industrial Tribunal, the case of the employer was that the Sales Depot of J. & P. Coats India Pvt. Ltd. had prior to the amalgamation of that Company on 1st July 1974 handled the products of the said Company. According to the employer, the Company which was formed under the management of Madura Coats was formed by amalgamation of 20 Sales Depots with offices spread all over the country. According to the employer, upon the expiry of the settlement of 1971, an attempt had been made by the management to issue a notice of change, but this was not pressed during the years of the emergency. When the last settlement was entered into on 22nd January 1980, the Union had agreed to a concession whereby the rate of variation over the Consumer Price Index was fixed at a lower rate. This, according to the management, did not entirely rectify the "deficiency" in the scheme for Dearness Allowance. The grounds on which the employer sought an alteration of the existing scheme for Dearness Allowance were as follows : (i) There had to be a uniformity in the service conditions in respect of employees doing similar kind of work. The wages and benefits

prevailing in the Mumbai establishments were better than those prevailing in other establishments of the Company and it was necessary to recast the wage structure and service conditions to bring them in line with the service conditions of the other offices of the Company; (ii) As a result of the double linkage, an increase per point of the Consumer Price Index was “phenomenal” and since the increase in the Dearness Allowance was automatic, the management had no control over the payment thereof; (iii) The scheme would upset the budget of the Company; (iv) Labour costs incurred by the management as a percentage of the cost of production and of turn over were 28% and 21% respectively; (v) An employee with a higher basic wage obtained higher Dearness Allowance per every point of increase in the Consumer Price Index than an employee with lesser basic salary which would aggravate the disparity between employees drawing lower basic wages and employees drawing higher basic wages; (vi) The payment of Dearness Allowance to industrial employees alone is discriminatory since the workforce which is employed in the commercial/industrial undertakings does not enjoy Dearness Allowance; (vii) The

scheme for Dearness Allowance lacks a relationship with productivity; (viii) Neutralization to the extent of 95% and/or 100% is permissible only in the case of those employees whose wages are at the subsistence level and in the present case, the rate of neutralization exceeded beyond 100%. These were the grounds which were urged in the Written Statement in support of a modification of the scheme of Dearness Allowance.

10. The submission of the Union before the Court is that as a result of the award of the Tribunal, serious prejudice would be caused to the workmen and the abolition of the existing scheme of Dearness Allowance would in fact, result in a serious reduction of the total wage packet. A Chart has been placed on the record. Counsel submitted that in view of the settled principles of law laid down by the Supreme Court, the management ought to have made out a compelling necessity for altering the existing scheme of Dearness Allowance which held the field for over three decades. The Industrial Tribunal in its original award and even after remand held that there was no financial stringency and the position of the

Company was financially sound. The evidence of the sole witness who stepped into the witness box, was destructive of the entire case of the management since he has admitted on behalf of the management that the rate of neutralization was in fact, below 60%. Counsel submitted that the scheme for Dearness Allowance based on double linkage has existed since 1960; and as has been the subject matter of industrial settlements between the management and the workforce since 1971. As a result of the obdurate attitude of the management, it has been urged, there has been no wage revision since the expiry of the last settlement 25 years ago in 1980. The Industrial Tribunal, it was submitted, has seriously erred in abolishing the existing system of the payment of Dearness Allowance in the absence of any evidence on the record and the award is in the teeth of the settled principles of law that have been laid down by the Supreme Court.

11. On the other hand, it was urged on behalf of the management that there was no intention on the part of the management to hurt the wage packet of the workmen and the

emoluments as of August 2000 would be protected in view of the order that was passed by a Division Bench in the earlier round of litigation. Counsel submitted that it is evident from the deposition of the witness for the management that he was not even aware of the basic concepts relating to Dearness Allowance such as neutralization and that it would be appropriate for the Court to keep aside the evidence of the management's witness. Counsel relied on a chart to demonstrate that the rate of neutralization would be in excess of 100% and that consequently, a case for abolition of the existing system has been established. The management, it was urged, had attempted to issue a notice of change in 1975 which could not be pressed earlier during the emergency and the settlement of 1980 continued the dual linkage based Dearness Allowance. In the circumstances, it was submitted that no case for interference under Article 226 of the Constitution has been made out.

12. In considering the rival submissions, it would at the outset, be worthwhile to have regard to the evidence that was

adduced on behalf of the management. On behalf of the management, S.S. Thakur who was the Administration Manager stepped into the witness box. In his Examination-in-Chief, the witness stated that in the Bombay establishment, the service conditions of the workmen were on the higher side and one of the major contributory factors was a faulty scheme of Dearness Allowance which has double linkage both with the Consumer Price Index and the basic wage. According to the witness, as a result of this scheme, the Dearness Allowance has increased in geometrical proportions. The witness then stated that the Company has over 20 Sales Depots all over India and that there was no justification for the Depots in Mumbai to have service conditions at variance with those of the others. In the course of the cross-examination, the witness was specifically questioned as to why the management has regarded the existing system of Dearness Allowance as faulty. The witness stated that it was faulty because employees with lesser basic wages get substantial lesser Dearness Allowance, whereas employees with higher basic wages get higher Dearness Allowance resulting in an increasing

disparity. The principal case of the management for the abolition of the existing system of Dearness Allowance was that the existing scheme resulted in neutralization in excess of hundred percent. When the witness was cross-examined with reference to this, he stated that he did not know the method of neutralization; that he did not know the basis of the calculation of hundred percent neutralization or the details thereof. The witness stated that he was unaware of the percentage of neutralization in respect of the Bombay employees and that it was true that after 1980, there was no wage revision for the employees in Bombay. The witness admitted that when the employees reached the maximum of their wage scales of basic wages, there was a stagnation and that some of the employees had already reached their maximum in the grade. In the course of his Examination-in-Chief the witness had tendered a document at Exh.C-14 to establish the case of the management in regard to the increases in Dearness Allowance in the existing scheme. When the witness was cross-examined further, his answers are to my mind material because they are completely destructive of the case of the management that the neutralization

was in excess of hundred percent. The answers of witness are of crucial importance and it would be convenient to extract them verbatim:

> "It is true that we had not calculated the rate of percentage of neutralization on the basis of provision of 1980 settlement. I have calculated the correct rate of neutralization after receiving this statement. "We are paying wages neutralising rise in the Index at the rate of 59.27% at the basic wage of Rs.100/- as against 100% increase in the Index. In respect of Rs.200 basic wages neutralization is 56.97%. In respect of Rs.300 basic and in respect of Rs.400 basic wages neutralization is 52.86% wages neutralization is 54.55%. In respect of Rs.500 basic wages neutralization is 51.62% and in respect of Rs.600/- basic wages neutralization is 50.67%." I shall furnish to the Court chart of neutralization as calculated by me above, next time."

13. This is the only oral evidence that was adduced on behalf of the management. Ex-facie, it is evident that the management failed to demonstrate how the slab system of Dearness Allowance which had held the field for over three decades warranted an abolition. If the case of the management was that the slab system has resulted in neutralization in excess of hundred percent, the management failed to establish that in the evidence of its own witness. The witness stated initially that he

was unaware of the concept of neutralization or of even the basis of the averment that neutralization was in excess of hundred percent. In the subsequent part of his evidence, the witness added that the correct rate of neutralization had been calculated. At the basic wage of Rs.100, the rate of neutralization was 59.27%; at the basic wage of Rs.200, it was 56.97%; at the basic wage of Rs.300, it was 52.86%; at the basic wage of Rs.400, it was 54.55%; at the basic wage of Rs.500, it was 51.62% and at the basic wage of Rs.600, the rate of neutralization was 50.67%. Counsel appearing on behalf of the management submits that the evidence of the witness has to be simply discarded as he was unaware of the concept of neutralization. The submission can be looked at from either of two perspectives. If the evidence of the sole witness for the management is discarded, then there is absolutely no evidence to establish a case for the abolition of the existing system of Dearness Allowance which had held the field for a long period of time, in excess of three decades. Alternatively, if the admissions of the witness in the course of the cross-examination are considered, they would clearly demonstrate that neutralization has

not approached hundred percent and in fact, had never exceeded sixty percent.

14. The Industrial Tribunal in its earlier award prior to remand, had dealt with the financial position of the management. This was not disturbed in the order of a Learned Single Judge of this Court remanding the proceedings for fresh consideration of certain issues. In the course of the award dated 10th June 1996, the Industrial Tribunal held thus:

> "The financial position of the present Company for the period from 1979 to 1989 and for the further period has been brought before Tribunal by both the parties by filing different statements. It may be seen from the statements that, while the subscribed capital has increased between the years 1978 and 1993 from Rs.1,1278 lakhs to Rs.3,286 lakhs, registering an increase of 279 percent. The gross asset of the Company between the same period has increased from Rs.3,725 lakhs to Rs.64,344 lakhs registering in increase of 1727 percent. Similarly revenue and surplus which in 1978-79 stood at Rs.608 lakhs and has become Rs.24,936 lakhs in the year 1992-93 registering as increase of 4101 percent. Whereas, the sales and other income during the period rise from Rs.8,775 lakhs to Rs.58,379 lakhs registering a percentage increase of 655 per cent. It will also be seen that between the period 1978 to 1992-93 the share-holders of the Company have enjoyed 361 per cent dividends over their capital. The net profits of the Company has increased from Rs.278 lakhs in 1978-79 to

> Rs.1,612 lakhs in 1992-93, registering an increase of 580 percent. Whereas, the gross profit has increased between the same period from Rs.3,014 lakhs to Rs.38,834 lakhs, registering an increase of 1288 percent."

15. In the course of its award after remand, the Industrial Tribunal noted that the profit making position of the Company had not been denied (para 45). The Industrial Tribunal held that the material before it showed that the Company had a sound financial position. The Industrial Tribunal, however, then held as follows :

> "However, merely the company is in profit, shall not necessarily lead to the inference or direction for paying more Dearness Allowance for increase in wage structure of the employees. The profitability has to be seen within the angle that the employer must have used the profit for increase in the business and to satisfy the motive, therefore, the profitability clause though can be taken into consideration, for revising the wage structure pertaining to Dearness Allowance, it cannot be assumed that the profitability shall be diverted solely to the employees concerned without giving any entitlement to the employer for making any increase in the business."

Now it was <u>not</u> the case of the Union that the entire profitability should be handed down to the workmen in the form of a wage revision. That was not the case of the Union. The case of the

Union was that the financial condition of the Company was sound and that consequently, the plea of the workmen for wage revision which had not taken place since 1980 should be accepted.

16. On the basis of the aforesaid material which has come on record, it would now be appropriate to deal with the position in law as it emerges from several decided cases. In **Monthly Rated Workmen at the Wadala factory of the Indian Hume Pipe Co. Ltd. vs. Indian Hume Pipe Co. Ltd. Bombay,** 1986 1 CLR 380 (S.C.), the management had a factory and its head office at Mumbai. In the factory at Mumbai, there were 375 daily rated workers and 80 monthly rated clerks and subordinate staff. The Company had branches all over India and it employed 3000 daily rated workers and 1000 monthly rated clerks and subordinate staff. A slab system of Dearness Allowance was in force since 1958 pursuant to an industrial award. The management gave a notice of change in 1975 for doing away with the slab system of Dearness Allowance and it was referred to adjudication in respect of the monthly rated staff. The Industrial Tribunal accepted the

contention of the management and that decision was carried in appeal to the Supreme Court. The Supreme Court held that the slab system had been in vogue for 18 years; that it had worked satisfactorily and had become a part of the service conditions. The Tribunal had founded the abolition of the system on the ground that when the system was introduced, the spiralling rise in the cost of living index had not been foreseen; that it would work against the principle of parity and uniformity and there was a danger of the subordinate staff getting more emoluments than their officers who were recently employed. Rejecting the contention, the Supreme Court held thus :

> "These are all assumptions without necessary materials and this is the second error committed by the tribunal. It is not uncommon that even in prestigious institution recently employed officers get emoluments less than the subordinate staff. On this plea, the benefits that the workmen were enjoying till then should not be denied to them. To say that the system had become 'unscientific' and 'improper' because the workmen were getting fantastic amount of dearness allowance was again without necessary material. The Tribunal then proceeded to say that change in the slab system was necessary in the "larger interest of the country", "in the interest of social justice", "in the interest of justice and fair play", "to avoid industrial unrest", "general interest of the company and in the larger interest of the nation". These are empty verbiage without any basis on the facts

> of the case. The discussion in the award that continuation of the dearness allowance would bring about neutralization above 100 per cent is also not supported by sufficient materials. The Tribunal has devoted some discussion in support of the highly placed officers and went to their rescue with the plea that they were subject to taxation rendering their salaries modest. We wish to state that all these statements could have been avoided in a matter where the Tribunal had only to consider whether the management was justified in trying to upset a scheme that had worked satisfactorily for a period of 18 years. We do not propose to make further comments upon the award of the tribunal. Suffice it to say that the whole approach is erroneous and the conclusions were arrived at on assumptions without acceptable evidence. The management had not produced before the Tribunal sufficient evidence to persuade it to change the existing system. It may be that the slab system did not find favour with some other Tribunals. But that is no reason why a system that had existed for a long period of time should be stopped to the detriment of the workmen without compelling reasons." (emphasis supplied).

These observations of the Supreme Court must in my view apply to the facts of the present case as well. As in the case before the Supreme Court, the submission of the management that the slab system of Dearness Allowance results in a neutralization above hundred percent has not been supported in the evidence. On the contrary, the evidence of the sole witness for the management is

completely destructive of that case. As before the Supreme Court, the finding which has been arrived at is not on the basis of any acceptable evidence. As held by the Supreme Court, there was no reason why a scheme for Dearness Allowance which had held the field for a long period of time should be abolished to the detriment of the workmen without compelling reasons. Compelling reasons must be demonstrated to exist by the management, something which is lacking in the present case.

17. The next judgment of the Supreme Court to which it is necessary to make a reference is **Workmen represented by Secretary v. The Management of Reptakos Brett. & Co. Ltd.**, 1991 2 CLR 863. In that case also, the management had provided a slab system of Dearness Allowance linked both with the cost of living index as well as the basic wage. The system remained operative for about 30 years. The question before the Supreme Court was whether the management was entitled to restructure the scheme for Dearness Allowance, by abolishing the slab system and substituting it by a scheme which was prejudicial to the

workmen on the ground that the slab system has resulted in over neutralization. The Supreme Court in the course of its judgment adverted to the principles which were laid down by the Court in **Ahmedabad Mills Owners' Association vs. The Textiles Labour Association,** 1966 1 SCR 382. The Supreme Court had held there that it was for the management which was seeking a restructuring of Dearness Allowance to the disadvantage of workmen to prove to the satisfaction of the Tribunal that the wage-structure in the industry concerned was well above the minimum level and that the management is financially not in a position to bear the burden of the existing wage structure. The Court then referred to the following observation contained in the decision in Indian Hume Pipe (supra) :

> "The question is often asked as to whether it would be advisable for Tribunal and Courts to revise the wage structure to workmen to their prejudice when a dispute arises. Normally the answer would be in the negative. Tribunals and Courts can take judicial notice of one fact; and that is that the wages of workmen, except in exceptionally rare cases, fall within the category of mere "subsisting wages". That being so, it would be inadvisable to tinker with the wage structure of workmen except under compelling circumstances".

The Supreme Court held that the Dearness Allowance scheme

which had stood the test of time for almost thirty years and had been approved by various settlements between the parties had been unjustifiably abolished.

18. At this stage, it would be necessary to advert to two decisions of Division Benches of this Court. In **Mazgaon Dock Ltd. vs. Association of Engineering Workers,** 1989 II CLR 713, the Court had before it an existing scheme of Dearness Allowance which was based on a slab system that was linked with the basic wage and with the Consumer Price Index. The Division Bench held, following the law laid down by the Supreme Court that the existing system of Dearness Allowance or for that matter, the other service conditions of workers should not be disturbed if they are beneficial to the workmen and are sought to be replaced by less beneficial conditions unless there are compelling reasons to do so. The Court noted that it was true that the existing system may result in an anomaly in certain cases. But those anomalies were so marginal as to require no serious consideration at least for replacing it by a totally new system as the Tribunal had done.

Moreover, the Court held that the demand to effect a change in the system was not raised by the workmen and if the workmen had no grievance against it, there was no reason to tinker with a system which had prevailed for over 40 years. Another decision along the same lines is a decision of the Division Bench in **Hindustan Lever Mazdoor Sabha vs. Hindustan Lever Ltd.** 1989 II CLR 558. In its decision, a Division Bench held that in a case where an adjudicating authority is called upon to introduce a system of Dearness Allowance not for the first time but to replace the existing system with a new system, the Court should not substitute or abolish the existing system by one which is less beneficial to the workmen.

19. If these binding principles are applied to the facts of the present case, the position which would emerge is thus. The Tribunal has noted that the financial condition of the Company is sound. No effort was made before this Court to displace that finding. The existing slab system of Dearness Allowance has remained in operation for over three decades. In such a case, if

the existing system was to be abolished and to be substituted by a new system, the burden is on the management to establish a compelling necessity to do so. The management has no financial stringency nor has one been even argued in the oral submissions before this Court. The evidence of the management's witness would show that no over neutralization has resulted from the operation of the existing system. Ultimately, the contention of the management would boil down to the plea that there should be uniformity in the service conditions. This cannot operate to displace a system of Dearness Allowance which was in operation over a long period of time and for the displacement of which there is no compelling reason.

20. If the award of the Industrial Tribunal is now perused, it would reveal manifest errors that are apparent on the face of the record. The Industrial Tribunal was correct initially in holding that the Dearness Allowance to the workmen at a particular place should depend upon the place where the workmen are working irrespective of the fact that the industrial undertaking in which the

workmen are employed is a unit of an industrial enterprise having an all India or inter State operation. The Industrial Tribunal noted the sound financial position of the Company. Having said this, the Industrial Tribunal then arrived at the conclusion that the existing system of Dearness Allowance was faulty on the basis of the evidence of the management's witness. The evidence of the management's witness, is already discussed in the earlier part of this judgment. The evidence of that witness, as already noted, is destructive of the case of the management. None of the admissions in the cross-examination of the witness have been adverted to by the Industrial Tribunal. There is no finding at all by the Industrial Tribunal that the existing system of Dearness Allowance has resulted in a neutralization over hundred percent. There is absolutely no finding as to how the existing system is anomalous. The Industrial Tribunal still proceeded to accept the notice of change proposed by the management on the specious ground that the employer intended to regularise the scheme, in order that there should be a uniformity of practice. In my view, the entire reasoning of the Industrial Tribunal is erroneous and suffers

from a clear legal perversity. The Industrial Tribunal has ignored the evidentiary material. Were the Tribunal to consider it, the only conclusion would be the failure of the employer to establish compelling reasons for the change. The award is in the teeth of the settled position of law. There has been no wage revision since 1980. The Union has demonstrated through its charts how the proposed scheme will lead to a serious detriment to the wage packet of the workmen. The protection of the August 2000 wage will not alleviate the stagnation in the wages which will result. A case for the exercise of the jurisdiction under Article 226 is squarely made out.

21. That leaves the Court to consider the relief which is to be granted in this petition. A case for the remand of proceedings to the Industrial Tribunal has, in my view, been made out. The proposal which was made by the management in respect of the basic wages was linked to the proposal in regard to the scheme of Dearness Allowance. Both are intrinsic parts of the offer and cannot be isolated. Since this Court has come to the conclusion

that the management failed to establish a case in law for abolition of the existing scheme of Dearness Allowance based on dual linkage, it would not be proper to hold the management to that part of the offer which related to basic wages alone. The issue of basic wages cannot be divorced from the question of Dearness Allowance since the overall impact on the wage packet and the financial impact for the employer have to be considered. Hence, it is only appropriate and proper that the Industrial Tribunal upon remand should consider both the question of the appropriate structure of basic wages together with the demand which has been raised by the Union in regard to the revision of Dearness Allowance. However, the Industrial Tribunal, it is clarified, would be at liberty to consider whether the rates of variation that are prescribed in the slab system of Dearness Allowance based on dual linkage, warrant any modification in the light of the facts which have come on the record before it. Accordingly, this petition is allowed in part. The award of the Industrial Tribunal in regard to basic wages and Dearness Allowance is quashed and set aside. The proceedings shall stand remitted back to the Industrial Tribunal

for fresh determination in the light of the observations contained in this judgment. Parties are directed to appear before the Industrial Tribunal for receiving directions on 25th April 2005 on which day, the Tribunal shall set down a time schedule for the early disposal of the proceedings.

22. A Division Bench of this Court in its order dated 1st August 2000 had during the pendency of the proceedings protected wages as of August 2000 and that order was continued during the pendency of these proceedings on 12th January 2004. The interim protection which was granted in the aforesaid terms shall continue until the disposal of the Reference by the Tribunal.

23. The Petition is accordingly disposed of. There shall be no order as to costs.